

NWH-CV19-6004569-S

: SUPERIOR COURT

DOWNTOWN NEW CANAAN, LLC.

: J.D. OF STAMFORD/NORWALK

VERSUS

: NORWALK HOUSING SESSION

HAMPTONITE, NEW YORK, INC.

: APRIL 22, 2019

MOTION TO DISMISS

Pursuant to Practice Book Section 10-30, et seq, the undersigned defendant, through counsel, moves that this court dismiss the plaintiff's complaint because this court lacks subject matter jurisdiction.

This is a summary process complaint in which the plaintiff seeks possession of the commercial premises occupied by the defendants at 136 Elm Street, New Canaan, CT 06840 on the basis of nonpayment of rent. The return of service of the notice to quit indicates that the marshal failed to leave the notice at the premises or with an authorized person. Accordingly, this court lacks subject matter jurisdiction over this action.

A memorandum of law in support of this motion is attached hereto.

THE DEFENDANT
HAMPTONITE NEW YORK, INC.

By, _____
Abram Heisler
Attorney at Law
16 River Street, second floor
Norwalk, CT 06850
(203)854-9722
Juris # 408828

ORDER

The foregoing motion, having been heard by the Court is hereby ORDERED

GRANTED / DENIED

JUDGE / ASSISTANT CLERK

CERTIFICATION

This is to certify that a copy of the foregoing was emailed on April 22, 2019 to
yona@yonalaw.com

Abram Heisler

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

I. Facts and legal proceedings

This is a summary process complaint in which the plaintiff seeks possession of the commercial premises occupied by the defendants at 136 Elm Street, New Canaan, CT 06840 on the basis of nonpayment of rent. The return of service of the notice to quit indicates that the marshal failed to leave the notice at the premises or with an authorized person.

The defendants have filed the instant motion alleging that manner of service of the notice to quit deprives this court of subject matter jurisdiction.

II. Law and Argument

“A motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court” *Gurliacci v. Mayer*, 218, Conn. 531, 544 (1991) quoting *Baskin’s Appeal from Probate*, 194 Conn. 635, 640 (1984).

Summary process statutes that grant a landlord rights in derogation of the common law "" have been narrowly construed and strictly followed"" Jefferson Garden Associates v. Greene, 202 Conn. 128, 243 (1987); Jo-Mark Sand and Gravel Co. v. Pantanella, 139 Conn. 598, 600-601 (1953). The Superior Court has jurisdiction to hear a summary process action only if the landlord has previously served the tenant with a notice to quit. Housing Authority of the City of Norwalk v. Harris, 225 Conn. 600, 605 (1993). See also Sullivan v. Naumeg Walk in Medical Center, PC, 35 Conn. App. 185, 188 (1994). Garden Associates v. Greene, 202 Conn. 128, 243 (1987); Jo-Mark Sand and Gravel Co. v. Pantanella, 139 Conn. 598, 600-601 (1953). The Superior Court has jurisdiction to hear a summary process action only if the landlord has previously served the tenant with a notice to quit.

Housing Authority of the City of Norwalk v. Harris, 225 Conn. 600, 605 (1993). See also Sullivan v. Naumeg Walk in Medical Center, PC, 35 Conn. App. 185, 188 (1994).

General Statutes § 47a-23(c) allows for **service** of process of the **notice to quit** to be made to each lessee, either personally or at his abode, or "at the place of the **commercial** establishment."⁶ "[T]he general rule is well established that where a specified mode of giving notice is prescribed by statute, that method is exclusive." *Windsor Properties, Inc. v. Great Atlantic & Pacific Tea Co.*, 35 Conn.Sup. 297, 301, **408 A.2d 936** (1979). Section 47a-23(c) makes a distinction only between residential and **commercial** property, and has no special provisions for corporate defendants or the status of the business located at the property. "Nothing in General Statutes [§] 47a-23 requires **service** of a **Notice to Quit** on the specific individuals listed in General Statutes § 52-57." *Scerrato v. Shoshie Baking Co.*,

Superior Court, judicial district of Hartford-New Britain at New Britain, No. SPN-9102-15498-NB (March 22, 1991) (Berger, J.). The unambiguous language of the statute mandates that "abode" **service** at the place of the **commercial** establishment is proper. See *GGG v. Nathan's Famous, Inc.* Superior Court, judicial district of New Haven, Docket No. SPNH 9403-38416, 11 Conn. L. Rptr. 495 (April 27, 1994) (Mintz, J.) (**service** "at the place of occupancy of a business is proper"); *Scerrato v. Shoshie Baking Co., supra*, (**notice to quit** was left with an employee of the company who was not a corporate officer); *Karathanasopoulos v. Omni Building*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. SPH 9006-55957, 3 Conn. L. Rptr. 665 (December 17, 1990) (Berger, J.) (when the property at issue was a parking lot, leaving notice at the lessee's neighboring building complies with § 47a-23(c)); *McIntyre v. TLC Oil Co.*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. SPH-8308-20082 (December 5, 1983) (Maloney, J.) (leaving notice in the hand of the person in charge of premises complies with statute).

Sullo v. Main Stop Automotive, Inc. SPNH 9701-49721, Bridgeport Housing Session, 5/9/1997,

Levin. J.

In the instant case the marshal's return of service indicates that rather than leaving the notice at the place of business or in the hands of an authorized party the notice was improperly left in the hands of an individual at the subject premises.

III. CONCLUSION

The service of the notice to quit in the hands of a person at the premises rather than at the place of the premises deprives this court of subject matter jurisdiction.

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